



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA-R04-RCRA-2019-0673; FRL-10005-60-Region 4]

Florida: Proposed Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Florida has applied to the Environmental Protection Agency (EPA) for final authorization of changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA), as amended. EPA has reviewed Florida's application and has determined, subject to public comment, that these changes satisfy all requirements needed to qualify for final authorization. Therefore, we are proposing to authorize the State's changes. EPA seeks public comment prior to taking final action.

DATES: Comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R04-RCRA-2019-0673, at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from www.regulations.gov. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider

comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Leah Davis, RCRA Programs and Cleanup Branch, LCR Division, U.S. Environmental Protection Agency, Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960; telephone number: (404) 562-8562; fax number: (404) 562-9964; e-mail address: davis.leah@epa.gov.

SUPPLEMENTARY INFORMATION:

A. Why are revisions to state programs necessary?

States that have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, states must change their programs and ask EPA to authorize the changes. Changes to state programs may be necessary when Federal or state statutory or regulatory authority is modified or when certain other changes occur. Most commonly, states must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 268, 270, 273, and 279.

New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates pursuant to the Hazardous and Solid Waste Amendments of 1984 (HSWA) take effect in authorized states at the same time that they take effect in unauthorized states. Thus, EPA will implement those requirements and prohibitions in Florida, including the issuance of new permits implementing those requirements, until the State is granted authorization to do so.

B. What decisions has EPA made in this proposed rule?

Florida submitted a final complete program revision application, dated September 16, 2019, seeking authorization of changes to its hazardous waste program that correspond to certain Federal rules promulgated between July 1, 2017 and June 30, 2019 (including RCRA Clusters¹ XXVI, XXVII, and the May 30, 2018 Amendments to Checklist² 233 from Cluster XXIV, Response to Vacatur of Certain Provisions of the Definition of Solid Waste Rule).³ EPA concludes that Florida's application to revise its authorized program meets all of the statutory and regulatory requirements established under RCRA, as set forth in RCRA section 3006(b), 42 U.S.C. 6926(b), and 40 CFR part 271. Therefore, EPA proposes to grant Florida final authorization to operate its hazardous waste program with the changes described in the authorization application, and as outlined below in Section F of this document.

Florida has responsibility for permitting treatment, storage, and disposal facilities within its borders (except in Indian country, as defined at 18 U.S.C. 1151) and for carrying out the aspects of the RCRA program described in its program revision application, subject to the limitations of HSWA, as discussed above.

C. What is the effect of this proposed authorization decision?

If Florida is authorized for the changes described in Florida's authorization application, these changes will become part of the authorized State hazardous waste program, and will therefore be federally enforceable. Florida will continue to have primary enforcement authority and responsibility for its State hazardous waste program. EPA would maintain its authorities

¹ A "cluster" is a grouping of hazardous waste rules that EPA promulgates from July 1st of one year to June 30th of the following year.

² A "checklist" is developed by EPA for each Federal rule amending the RCRA regulations. The checklists document the changes made by each Federal rule and are presented and numbered in chronological order by date of promulgation.

³ Florida was originally authorized for Checklist 233 on May 10, 2019, but deemed to be broader in scope than the Federal program given that it only adopted the 2015 Revisions to the Definition of Solid Waste Rule. With Florida's adoption of the May 2018 revisions, it is now equivalent to the Federal program.

under RCRA sections 3007, 3008, 3013, and 7003, including its authority to:

- Conduct inspections, and require monitoring, tests, analyses, and reports;
- Enforce RCRA requirements, including authorized State program requirements, and suspend or revoke permits; and
- Take enforcement actions regardless of whether the State has taken its own actions.

This action will not impose additional requirements on the regulated community because the regulations for which EPA is proposing to authorize Florida are already effective under State law, and are not changed by today's proposed action.

D. What happens if EPA receives comments that oppose this action?

EPA will evaluate any comments received on this proposed action and will make a final decision on approval or disapproval of Florida's proposed authorization. Our decision will be published in the *Federal Register*. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time.

E. What has Florida previously been authorized for?

Florida initially received final authorization on January 29, 1985, effective February 12, 1985 (50 FR 3908), to implement the RCRA hazardous waste management program. EPA granted authorization for changes to Florida's program on the following dates: December 1, 1987, effective March 3, 1988 (52 FR 45634); December 16, 1988, effective January 3, 1989 (53 FR 50529); December 14, 1990, effective February 12, 1991 (55 FR 51416); February 5, 1992, effective April 6, 1992 (57 FR 4371); February 7, 1992, effective April 7, 1992 (57 FR 4738); May 20, 1992, effective July 20, 1992 (57 FR 21351); November 9, 1993, effective January 10, 1994 (58 FR 59367); July 11, 1994, effective September 9, 1994 (59 FR 35266); April 16, 1994, effective October 17, 1994 (59 FR 41979); October 26, 1994, effective December 27, 1994 (59

FR 53753); April 1, 1997, effective June 2, 1997 (62 FR 15407); January 20, 1998, effective March 23, 1998 (63 FR 2896); September 18, 2000, effective November 18, 2000 (65 FR 56256); August 23, 2001, effective October 22, 2001 (66 FR 44307); August 20, 2002, effective October 21, 2002 (67 FR 53886 and 67 FR 53889); October 14, 2004, effective December 13, 2004 (69 FR 60964); August 10, 2007, effective October 9, 2007 (72 FR 44973); February 7, 2011, effective April 8, 2011 (76 FR 6564); October 8, 2014, effective December 8, 2014 (79 FR 60756); and May 10, 2019, effective May 10, 2019 (84 FR 20549). The authorized Florida program, through RCRA Cluster IV, was incorporated by reference into the CFR on January 20, 1988, effective March 23, 1998 (63 FR 2896).

F. What changes is EPA proposing with today's action?

Florida submitted a final complete program revision application, dated September 16, 2019, seeking authorization of changes to its hazardous waste management program in accordance with 40 CFR 271.21. This application included changes associated with Checklists 233, 238, 239, 240, and 241. EPA proposes to determine, subject to receipt of written comments that oppose this action, that Florida's hazardous waste program revisions are equivalent to, consistent with, and no less stringent than the Federal program, and therefore satisfy all of the requirements necessary to qualify for final authorization. Therefore, EPA is proposing to authorize Florida for the following program changes:

Description of Federal Requirement	<u>Federal Register</u> Date and Page	Analogous State Authority⁴
Checklist 233, Response to Vacatur of Certain Provisions of the Definition of Solid Waste	83 FR 24664 5/30/18	F.A.C. 62-730.021 and 62-730.030(1)

Checklist 238, Confidentiality Determinations for Hazardous Waste Export and Import Documents	82 FR 60894 12/26/17	F.A.C. 62-730.021; 62-730.030(1); and 62-730.160(1);
Checklist 239, Hazardous Waste Electronic Manifest User Fee	83 FR 420 1/3/18	F.A.C. 62-730.160(1); 62-730.170(1); and 62-730.180(1) and (2)
Checklist 240, Safe Management of Recalled Airbags	83 FR 61552 11/30/18	F.A.C. 62-730.020(1); 62-730.030(1); and 62-730.160(1)
Checklist 241, Management Standards for Hazardous Waste Pharmaceuticals and Amendment to the PO75 Listing for Nicotine	84 FR 5816 2/22/19	F.A.C. 62-730.030(1); 62-730.160(1); 62-730.180(1) and (2); 62-730.181(1); 62-730.183; 62-730.220(1); and 62-730.185

⁴ The Florida regulatory citations are from the Florida Administrative Code (F.A.C.), effective August 16, 2019.

G. Where are the revised State rules different from the Federal rules?

When revised state rules differ from the Federal rules in the RCRA state authorization process, EPA determines whether the state rules are equivalent to, more stringent than, or broader in scope than the Federal program. Pursuant to RCRA section 3009, 42 U.S.C. 6929, state programs may contain requirements that are more stringent than the Federal regulations. Such more stringent requirements can be federally authorized and, once authorized, become federally enforceable. Although the statute does not prevent states from adopting regulations that are broader in scope than the Federal program, states cannot receive federal authorization for such regulations, and they are not federally enforceable.

There are no State requirements in the program revisions listed above that are considered to be more stringent or broader in scope than the Federal requirements.

States cannot administer certain Federal regulatory functions, such as the user fee provisions, included in the regulations associated with the Hazardous Waste Electronic Manifest User Fee Rule (Checklist 239). Although Florida has adopted these regulations to maintain its equivalency with the Federal program, it has appropriately maintained the Federal references in

order to reserve EPA's authority to implement these non-delegable provisions (see F.A.C. 62-730.020(3)(b)).

States also cannot administer certain Federal regulatory functions involving international shipments (*i.e.*, import and export provisions) associated with the Confidentiality Determinations for Hazardous Waste Export and Import Documents Rule (Checklist 238). Although Florida has adopted these regulations to maintain its equivalency with the Federal program, it has appropriately maintained the Federal references in order to reserve EPA's authority to implement these non-delegable provisions (see F.A.C. 62-730.020(3)(b)).

H. Who handles permits after the final authorization takes effect?

When final authorization takes effect, Florida will issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will continue to administer any RCRA hazardous waste permits or portions of permits that EPA issued prior to the effective date of authorization until they expire or are terminated. EPA will not issue any new permits or new portions of permits for the provisions listed in the table above after the effective date of the final authorization. EPA will continue to implement and issue permits for HSWA requirements for which Florida is not yet authorized. EPA has the authority to enforce State-issued permits after the State is authorized.

I. How does today's proposed action affect Indian country in Florida?

Florida is not authorized to carry out its hazardous waste program in Indian country within the State, which includes the Indian lands associated with the Miccosukee Tribe of Indians of Florida and the Seminole Tribe of Florida. Therefore, this proposed action has no effect on Indian country. EPA retains jurisdiction over Indian country and will continue to implement and administer the RCRA program on these lands.

J. What is codification and will EPA codify Florida’s hazardous waste program as proposed in this rule?

Codification is the process of placing citations and references to the State’s statutes and regulations that comprise the State’s authorized hazardous waste program into the Code of Federal Regulations. EPA does this by adding those citations and references to the authorized State rules in 40 CFR part 272. EPA is not proposing to codify the authorization of Florida’s changes at this time. However, EPA reserves the ability to amend 40 CFR part 272, subpart K for the authorization of Florida’s program changes at a later date.

K. Statutory and Executive Order Reviews

The Office of Management and Budget (OMB) has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011). This action proposes to authorize State requirements for the purpose of RCRA section 3006 and imposes no additional requirements beyond those imposed by State law. Therefore, this action is not subject to review by OMB. This action is not an Executive Order 13771 (82 FR 9339, February 3, 2017) regulatory action because actions such as today’s proposed authorization of Florida’s revised hazardous waste program under RCRA are exempted under Executive Order 12866. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action proposes to authorize pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538). For the same reason, this action also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This

action will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to authorize State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant and it does not make decisions based on environmental health or safety risks. This action is not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

Under RCRA section 3006(b), EPA grants a state’s application for authorization as long as the state meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a state authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in proposing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of this action in accordance with the “Attorney General’s Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings” issued under the executive order.

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). “Burden” is defined at 5 CFR 1320.3(b). Executive Order 12898 (59 FR 7629, February 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. Because this action proposes authorization of pre-existing State rules which are at least equivalent to, and no less stringent than existing Federal requirements, and imposes no additional requirements beyond those imposed by State law, and there are no anticipated significant adverse human health or environmental effects, this proposed rule is not subject to Executive Order 12898.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

Dated: February 2, 2020.

Mary S. Walker,

Regional Administrator, Region 4.

[FR Doc. 2020-03668 Filed: 2/24/2020 8:45 am; Publication Date: 2/25/2020]